THE HON'BLE MR JUSTICE J.CHELAMESWAR

And

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

W.P.Nos.17440, 17441 & 17442 OF 2005

-

DATED: 08.08.2005

-

Between:

P. Vema Reddy & 2 others … Petitioners in WP.17440/05

B. Thirupalu & another … Petitioners in WP.17441/05

T. Sambasiva Rao & 2 others … Petitioners in WP.17442/05

AND

The Government of A.P.,

Rep., by its Secretary, … Respondents in all Writ

School Education, Hyderabad. Petitions.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

COMMON ORDER:-

All these three writ petitions arise out of a common order, dated 02.08.2005. The petitioners are the applicants in various O.As. which were disposed of by the above mentioned order.

All the petitioners are teachers whose service conditions were earlier regulated by the A.P. Education Subordinate Service Rules and A.P. Education Service Rules issued in the year 1962 by an ordinance No.12 of 2005, dated 13.06.2005. The cadres to which these various petitioners belong was abolished and a new cadre has created by amalgamating the services of those cadres with the

cadres of the teachers teaching in various schools run by the Panchayat Raj Institutions. The service conditions of a amalgamate cadre is required to be regulated by the Rules framed by the Government under Sections 5 and 12 of the above mentioned ordinance and they were informed that such rules have in fact been framed under G.O.Ms.Nos.95 and 96, dated 25.07.2005.

The validity of the ordinance as well as the abovementioned rules are in challenge in those various O.As., from out of which these writ petitions arise.

The O.As. were admitted to by the order impugned in the present writ petitions. The Tribunal deferred the hearing of the O.As. The order of the Tribunal reads as follows:

> "The applicants in these O.As. are challenging the impugned ordinance No.12 of 2005 dated 13.06.2005 and the rules framed thereunder. The very same Ordinance has been challenged before the Hon'ble High Court in W.P.No.13010 of 2005. The said W.P. was dismissed by an order dated 29.06.2005. Against the said order of the Hon'ble High Court, the applicants therein filed Special Leave Petition before the Hon'ble Supreme Court in S.L.P. (Civil) No.13922 of 2005. The Hon'ble Supreme Court admitted the said case and passed the following interim order on 29.07.2005.
>
> > "Pending further orders, the concerned authorities of the Government shall intimate the Teachers, if any, promoted or transferred pursuant to the impugned Ordinance, that their promotion/transfer shall be subject to the outcome of this Special Leave Petition".
>
> 2. In view of the pendency of the matter before the Hon'ble Supreme Court, it would be appropriate to defer the hearing of these O.As.
>
> 3. Admit. Issue notice to the respondents, returnable in four weeks.
>
> 4. Post after four weeks. The respondents are permitted to file counters in due course."

Some of the Teachers who are similarly situated as the petitioners herein, earlier approached this Court by W.P.No.13010 of 2005 challenging the constitutionality under the above mentioned ordinance. This Court by its order dated 29.06.2005, dismissed the writ petition on the ground that in view of the decision of the Supreme Court in ***CHANDRA KUMAR'S CASE v. UNION OF INDIA*** the petitioners in the abovementioned writ petition could not have approached this Court at the first instance. Challenging the correctness of the decision of this Court in the said writ petition, dated 29.06.2005, it appears that the petitioners therein approached the Hon'ble Supreme Court by way of SLP.No.13922 of 2005.

When the O.As. in question, in these writ petitions, were listed for hearing, the Tribunal passed the above extracted order deferring to hear all the O.As. According to us, the issue before the Hon'ble Supreme Court is whether this Court can entertain a writ petition as a court of first instance or should have been agitated before the Administrative Tribunal. The merits of the ordinance in our view are not pending consideration before the Hon'ble Supreme Court.

Learned Government Pleader Sri J. Sudheer appearing for the respondents also stated that the Supreme Court did not make any order prohibiting the A.P. Administrative Tribunal from considering the legality of the abovementioned ordinance.

In the circumstances, we are of the opinion that there is no bar either in law or in fact for the Administrative Tribunal to consider the various questions of fact or law then arose in those O.As., wherein the abovementioned ordinance or rules framed thereunder are in challenge.

Having regard to the gravity of the matter and also having regard to the statement of the learned Government Pleader that the state is ready to proceed with the matter, we deem it appropriate to dispose of these writ petitions with an observation that it is desirable that the Tribunal should dispose of the O.As., expeditiously preferably within a period of four weeks from today.

Accordingly, the writ petitions are disposed of. No orders as to costs.

_____

J.CHELAMESWAR, J

Date: 08.08.2005

_____

M.VENKATESWARA REDDY, J

Note: Issue copy by tomorrow.

B/o.

ES